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Holdings Corporation

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 MAINE STATE RETIREMENT
12 SYSTEM, individually and on behalf
of all others similarly situated,

13 Plaintiff,

14 v.

15 COUNTRYWIDE FINANCIAL
16 CORPORATION, et al.,

17 Defendants.
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Case No. 2:10-CV-00302 MRP (MAN)

**BANK OF AMERICA
CORPORATION AND NB
HOLDINGS CORPORATION'S
REQUEST FOR JUDICIAL NOTICE
OF DOCUMENTS IN SUPPORT OF
THEIR MOTION TO DISMISS THE
AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT**

Hearing Date: October 18, 2010

Time: 11:00 a.m.

Judge: Honorable Mariana R. Pfaelzer

Courtroom: Courtroom 12

Spring Street Courthouse

1 In support of their Motion to Dismiss Plaintiffs' Amended
2 Consolidated Class Action Complaint, Defendants Bank of America Corporation
3 ("BAC") and NB Holdings Corporation ("NB") respectfully request the Court to
4 take judicial notice under Federal Rule of Evidence 201 of the following
5 documents:

6 1. Omnibus Order, *Argent Classic Convertible Arbitrage Fund, L.P. v.*
7 *Countrywide Financial Corp.*, Case No. 2:07-cv-07097 MRP (MANx) (C.D. Cal.
8 Mar. 19, 2009) as printed from <http://www.pacer.gov> on or about August 19, 2010
9 (Close Decl. Ex. 1);

10 2. Countrywide Financial Corporation's ("Countrywide") Quarterly
11 Report on Form 10-Q filed with the SEC on or about August 11, 2008 as printed
12 from <http://business.westlaw.com> on or about August 18, 2010 (Close Decl. Ex. 2);

13 3. BAC Registration Statement on Form S-4 Appendix A (attaching
14 Merger Agreement) filed with the SEC on or about May 28, 2008 as printed from
15 <http://business.westlaw.com> on or about August 18, 2010 (Close Decl. Ex. 3);

16 4. BAC Current Report on Form 8-K filed with the SEC on or about
17 July 1, 2008 as printed from <http://business.westlaw.com> on or about August 18,
18 2010 (Close Decl. Ex. 4);

19 5. Validus Holdings Limited Schedule 13G/A filed with the SEC on
20 behalf of BAC on February 12, 2010 as printed from <http://business.westlaw.com>
21 on or about August 18, 2010 (Close Decl. Ex. 5);

22 6. BAC Current Report on Form 8-K filed with the SEC on or about
23 November 10, 2008 as printed from <http://business.westlaw.com>, on or about
24 August 18, 2010 (Close Decl. Ex. 6);

25 7. Plaintiff's Opposition to Defendant BAC's Motion to Dismiss in
26 *Argent Classic Convertible Arbitrage Fund L.P. v. Countrywide Financial Corp.*,
27 No. CV 07-07097 MRP (MANx) (C.D. Cal. Feb. 6, 2009) as printed from
28 <http://www.pacer.gov> on or about August 18, 2010 (Close Decl. Ex. 7);

1 8. Consent Judgment & Order entered in *Federal Trade Commission v.*
2 *Countrywide Home Loans, Inc.*, Case No. 2:10-cv-04193-JFW-SS (C.D. Cal. June
3 15, 2010) as printed from <http://www.pacer.gov> on or about August 19, 2010
4 (Close Decl. Ex. 8); and

5 9. Amended Stipulation & Agreement of Settlement filed in *In re*
6 *Countrywide Financial Corp. Securities Litigation*, Lead Case No. 2:07-cv-05295-
7 MRP (MANx) (C.D. Cal. June 29, 2010) as printed from <http://www.pacer.gov> on
8 or about August 19, 2010 (Close Decl. Ex. 9).

9 10. Decision and order entered in *MBIA Insurance Corp. v.*
10 *Countrywide Home Loans, Inc.*, Index No. 602825/08 (Sup. Ct., N.Y. Co. Apr. 27,
11 2010) as printed from New York State Courts E-Filing System,
12 <http://iapps.courts.state.ny.us/webcivil/FCASSearch> on or about August 19, 2010
13 (Close Decl. Ex. 10);

14 Documents 1, 7, 8, 9 and 10 are court filings, and the Court may take judicial
15 notice of such filings. *See, e.g. In re Impac Mortg. Holdings, Inc. Sec. Litig.*, 554
16 F. Supp. 2d 1083, 1088 n.3 (2008).

17 Documents 2 through 6 are all filings with the Securities and Exchange
18 Commission. The Court may take judicial notice of these filings. *See Yuen v. U.S.*
19 *Stock Transfer Co.*, 966 F. Supp. 944, 945 n.1 (C.D. Cal. 1997) (“court may take
20 judicial notice of the contents of relevant public disclosure documents required to
21 be filed with the SEC”). The Court also may take judicial notice and consider these
22 documents for this Motion to Dismiss as they are matters of public record. *See*
23 *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (matters judicially noticeable
24 are proper grounds for consideration in a motion to dismiss under Rule 12(b)(6));
25 *Plevy v. Haggerty*, 38 F. Supp. 2d 816, 821 (C.D. Cal. 1998) (“On a motion to
26 dismiss, a court may take judicial notice of public records outside the pleadings.”)
27 (citing *MGIC Indemnity Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986)).

28 Based on the foregoing authorities, BAC and NB respectfully request that the

1 Court take judicial notice of the documents attached to the Declaration of Matthew
2 Close, filed herewith, in ruling on their Motion to Dismiss the Amended
3 Consolidated Class Action Complaint.

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5 Dated: August 20, 2010

6 Respectfully submitted,

7 SETH ARONSON
8 MATTHEW CLOSE
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10 By: /s/ Matthew Close
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